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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,905	01/16/2004	Shihong Lao	15115.103001\	7059

7590 12/21/2007
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EXAMINER

KRASNIC, BERNARD

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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12/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/758,905	Applicant(s) LAO ET AL.	
	Examiner Bernard Krasnic	Art Unit 2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expire 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~as set forth~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/05) Paper No(s). 9-10-2007

13. ☐ Other: _____.

JINGGE WU
 SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Each of the independent claims 23 -26 include the amended limitation "a distance recognition step of recognizing a distance to an object, wherein the step of extracting a face image includes a step of specifying a size of the face image to be extracted, based on a result of recognition by the distance recognition step" respectively which raises new issues that would require further consideration and/or search. Unlike independent claims 1 and 13, each of the independent claims 23 -26 did not consist of a dependent claim which recited the amended limitation and therefore for that reason would need further consideration and/or search because each independent claim 23-26 would need a totally different rejection than that which was presented by the Examiner on the Final Office Action dated 9-05-2007 which definitely would not put the application in better form for appeal because it is materially increasing and complicating the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner will not enter the proposed amendment because for purposes of appeal, the amended claims 23-26 would not reduce or simplify the issues at hand as discussed above.

The proposed amendments would have made the objections to the specification moot, they would have made the objections to the claims moot, they would have made the 35 U.S.C. 101 rejections moot, they would have made the 35 U.S.C. 112 rejections moot, if the amendments after the Final dated 12-03-2007 would have been entered but as the Examiner has mentioned before, the proposed amendments have not been entered.

In regards to the Applicants arguments filed on 12-03-2007, they have been fully considered but they are not persuasive. The Applicant alleges, "Additionally, Applicant respectfully submits that this rejection ..." in page 14 and "In fact, while the Examiner alleges that ..." in page 14, and states respectively that the rejection of record made in the Final Office Action dated 9-05-2007 by the Examiner were clearly inconsistent with the MPEP 706 because the examination was not clearly articulated in the early process of the prosecution because for example claims 12 and 13 were rejected based on new grounds which were not indicated by the Examiner in the previous Office Action. The Examiner disagrees because the Examiner clearly indicated in page 3 of the Final Office Action dated 9-05-2007 that the Applicant's amendment dated 7-16-2007 toward independent claims 1, 13, and 23-26 necessitated new grounds of rejection and therefore the Examiner had the opportunity to address new grounds of rejection for example to claims 12 and 13.

The Applicant alleges, "The Examiner acknowledges that Center fails to show or suggest ..." in page 16 through "In view of above, Center, Aoki, and Soriano ..." in page 17, and states respectively that Center and Aoki taken separately or in combination fails to show or suggest recognizing a distance to an object and specifying a size of the face image to be extracted based on a result of recognition by the distance recognition part as the amended claims 1 and 13 recite. The Examiner disagrees because the secondary reference Aoki as discussed in the Final Office Action dated 9-05-2007 clearly discloses how the distance of the characteristic portion [such as eyes, nose, mouth, etc.] is calculated and then the size of the face image / size filling the monitor is extracted based on this distance recognition. The Examiner believes that the Applicant has read a limitation into the claims which just is not recited in the claim. The Examiner believes that the Applicant believes that the distance calculated is between the object and the camera, but such claim language is not recited in the claims themselves and it is the Examiner's responsibility to interpret the actual claim limitations in the broadest reasonable manner. Therefore in view of Center, Aoki, and Soriano, the prior art references do actually teach the amended claim limitations of the proposed independent claims 1 and 13.

The Examiner does see that the amended limitations of independent claims 1 and 13 were only further limited by the subject matter of claims 4 and 16 respectively, similarly the amended limitations of each independent claim 23-26 would be taught by the respective Center, Aoki, and Soriano references as discussed above. Therefore, even if the amendments had been entered, the amended claims 1-3, 5-15, and 17-26 would still not be in condition for allowance [claims 4 and 16 would have been canceled]. However as had been initially stated, the Examiner will not enter the proposed amendment because for purposes of appeal, the amended claims 23 -26 would not reduce or simplify the issues at hand as discussed above.